

DOCKET FILE COPY ORIGINAL

SEP - 8 1997

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of

Federal-State Joint Board
on Universal Service

)
)
)
)

CC Docket No. 96-45

REPLY TO PETITIONS FOR RECONSIDERATION OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION

Michael F. Altschul
Vice President, General Counsel

Randall S. Coleman
Vice President for
Regulatory Policy and Law

1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036
(202) 785-0081

September 3, 1997

No. of Copies rec'd
List ABCDE

0411

TABLE OF CONTENTS

	Page
INTRODUCTION	1
I. EFFECTIVE OPERATION OF THE FEDERAL UNIVERSAL SERVICE FUND REQUIRES THAT THE COMMISSION NOT ALLOW STATES TO INCLUDE INTERSTATE REVENUES IN THEIR CALCULATION OF STATE UNIVERSAL SERVICE OBLIGATIONS.	2
II. THE COMMISSION SHOULD CLARIFY THAT CMRS PROVIDERS MAY RECOVER UNIVERSAL SERVICE CONTRIBUTIONS ON A SYSTEM-WIDE BASIS AS EFFICIENTLY AS POSSIBLE.	7
A. CMRS Networks Are Not Configured To Track Individual Subscriber Usage Between Interstate And Intrastate Boundaries.	7
B. Carriers Should Be Permitted To Implement Cost Recovery Mechanisms Prior To Making Their First Contribution To The Commission's Universal Service Fund.	9
CONCLUSION	12

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)	
)	
Federal-State Joint Board)	CC Docket No. 96-45
on Universal Service)	

**REPLY TO PETITIONS FOR RECONSIDERATION OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association ("CTIA")¹ submits its Reply to Petitions for Reconsideration in the above-captioned proceeding.²

INTRODUCTION

The Universal Service Order was an important first step in realizing the goals of the Telecommunications Act of 1996 by replacing an internal subsidy system with explicit transfers that reflect the competitive telecommunications industry. CTIA continues to support the Commission's efforts to finalize universal service rules which benefit all citizens. In its Reply to Petitions for Reconsideration, CTIA requests that the Commission not allow States to impede the successful operation of

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² Federal-State Joint Board on Universal Service, Report and Order in CC Docket No. 96-45, FCC 97-157 (released May 8, 1997) ("Universal Service Order").

the Commission's universal service fund by assessing carriers' interstate revenues for contributions to State funds.

In addition, CTIA seeks Commission clarification concerning carriers' ability to recover their contribution obligations. In the Universal Service Order, the Commission did not address how CMRS carriers, who operate under very different jurisdictional guidelines than wireline carriers, are to recover their contribution obligations from interstate consumers. Thus, CMRS carriers should be permitted to recover their contributions from all of their subscribers. Moreover, carriers must be permitted to minimize the inefficiencies arising from the time-lag between the period of contribution payments to the Commission's universal service mechanisms and the period of recovery of those payments from consumers.

I. EFFECTIVE OPERATION OF THE FEDERAL UNIVERSAL SERVICE FUND REQUIRES THAT THE COMMISSION NOT ALLOW STATES TO INCLUDE INTERSTATE REVENUES IN THEIR CALCULATION OF STATE UNIVERSAL SERVICE OBLIGATIONS.

In its Petition for Reconsideration and Clarification, MCI requests that the Commission "clarify that states cannot include carriers' interstate and international revenues in determining assessments for state funds."³ The Colorado Public Utilities Commission ("CoPUC") opposes MCI's position. It advocates allowing States to use a carrier's combined intrastate and interstate revenues as a basis for determining each carrier's contribution to State universal service funds when the Commission

³ MCI Petition for Reconsideration and Clarification at 6 (filed July 17, 1997).

uses a similar calculation in determining carriers' contribution requirements to the federal fund.⁴

U S WEST also disagrees with MCI's position. It asserts that the Commission lacks authority to order States to assess only the intrastate revenues of intrastate carriers for State universal service funds.⁵ Because States retain responsibility for 75 percent of high-cost funding, U S WEST claims that those States with substantial high-cost burdens will have difficulty satisfying their universal service needs if they are restricted from expanding their funding base to include interstate and international revenue.⁶

Legal and practical considerations strongly favor Commission clarification that States may not assess contributions based on a carrier's interstate revenue. As a preliminary matter, U S WEST's assertion concerning the Commission's lack of authority to limit State contribution requirements is legally unsound. Section 2(a) grants the Commission exclusive authority over interstate wire and radio communications⁷ and Section 1 directs the Commission to ensure reasonable charges for the same.⁸

⁴ See Colorado Public Utilities Commission Comments in Support of Petitions for Reconsideration at 3 (filed August 18, 1997).

⁵ See U S WEST Comments to Petitions for Reconsideration and/or Clarification at 4 (filed August 18, 1997).

⁶ See id. at 6.

⁷ 47 U.S.C. § 152(a).

⁸ 47 U.S.C. § 151.

Hence, from the beginning, the assertion that the Commission lacks authority over the regulation of interstate communications and the charges therefor is mistaken.

More specifically, the Communications Act of 1934 ("Act") grants the Commission primary authority over universal service mechanisms. Section 254(f) provides States with the authority to adopt regulations only insofar as those regulations are "not inconsistent with the Commission's rules to preserve and advance universal service."⁹ Moreover, a State's regulations and standards may not "rely on or burden Federal universal service support mechanisms."¹⁰ Generally, the Act permits States to impose additional requirements on telecommunications carriers for intrastate services, but only insofar as those requirements "are not inconsistent with [Part II of Title II of the Communications Act] or the Commission's regulations to implement [that] part."¹¹

As numerous judicial holdings reflect, the Act prohibits State action that conflicts or interferes with federal regulation of universal service mechanisms.¹² The Commission has also noted

⁹ 47 U.S.C. § 254(f).

¹⁰ Id.

¹¹ 47 U.S.C. § 261(c).

¹² See generally, Louisiana Public Service Comm. v. F.C.C., 476 U.S. 355, 374 (1986) ("[I]t is . . . a basic underpinning of our federal system, that state regulation will be displaced to the extent that it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress"); see also National Ass'n of Regulatory Utility Commissioners v. F.C.C., 880 F.2d 422, 429 (D.C. Cir. 1989) (noting the limitations on a State's authority over intrastate services when exercise of that

that under Section 254 "there is no doubt that the Commission . . . is to establish in the first instance what services should be supported and what are the necessary mechanisms to do so."¹³ The implication that the Commission lacks the authority to prohibit State universal service contribution assessments based, in part, on interstate revenues - the sole source of federal universal service high-cost funding -- is without merit.

A State's assessment for its universal service fund on the basis of interstate revenues is nonsensical and would interfere with the Commission's method of financing the federal universal service fund in violation of Section 254(f). The application of a carrier's interstate revenues to State contribution obligations lacks a nexus between the State and the services upon which contribution requirements are assessed. For example, a State such as Colorado has no legitimate expectation for State fund support from a carrier's interstate revenues derived from interstate telecommunications services provided between Illinois and Indiana. Yet, a State assessment based upon a carrier's interstate revenues could achieve this result.

Moreover, the State's use of interstate revenues would interfere directly with the Commission's method of financing the federal universal service fund and, when aggregated, could impose

authority negates the Commission's exercise of its own lawful authority over interstate communication).

¹³ Universal Service Order at ¶ 816.

unreasonable burdens upon carriers. For example, if every State assessed a universal service contribution requirement of two percent of interstate revenues upon carriers operating within the relevant State, a nationwide carrier would not retain sufficient interstate revenue to support the federal fund. In fact, very little revenue would remain to support the continued operation of the carrier (a state of affairs which conflicts with universal service principles).¹⁴ In the Universal Service Order, the Commission noted that "the states' authority to adopt sufficient support mechanisms is restricted to only those mechanisms that are consistent with and do not burden the federal mechanisms."¹⁵ State universal service contributions based on carriers' interstate revenues would violate this principle by severely diminishing the funds available for the federal universal service program. For this reason, the Commission should clarify that States may not assess State fund contributions on the basis of a carrier's interstate revenues.

¹⁴ State petitioners do not purport to limit their assessment on revenues that originate out of the assessing State. Even if States were restricted to revenues derived, in part, from that State, the financial burdens could become unreasonable and hinder the federal fund as each State individually operates to assess contributions. The aggregation of all States' assessment opportunities on this basis, could still exceed one hundred percent of a carrier's nationwide revenues. Furthermore, as demonstrated in CTIA's Petition for Reconsideration and Clarification ("CTIA Petition"), carriers cannot precisely determine the originating State of a call.

¹⁵ Id.

II. THE COMMISSION SHOULD CLARIFY THAT CMRS PROVIDERS MAY RECOVER UNIVERSAL SERVICE CONTRIBUTIONS ON A SYSTEM-WIDE BASIS AS EFFICIENTLY AS POSSIBLE.

A. CMRS Networks Are Not Configured To Track Individual Subscriber Usage Between Interstate And Intrastate Boundaries.

In the Universal Service Order, the Commission acknowledged that both carriers and consumers are responsible for supporting the federal universal service program. To that end, the Commission explicitly permits carriers to recover universal service contributions through rates for interstate services.¹⁶ This decision, however, presents significant obstacles for the CMRS industry which has historically operated without regard to State boundaries.

As set forth in CTIA's Petition for Reconsideration and Clarification,¹⁷ a requirement that CMRS providers pass-through costs only on interstate revenues would add considerably to the complex and difficult billing issues already raised by the Universal Service Order. The Commission should therefore clarify that CMRS providers may apply pass-through to all of their services and all of their customers, not just interstate services and interstate customers.

Unlike other telecommunications carriers, CMRS providers face unique problems in distinguishing interstate from intrastate end user revenues. State borders are virtually irrelevant in the design of CMRS network and billing systems. Indeed, CMRS service

¹⁶ Universal Service Order at ¶¶ 825, 838.

¹⁷ CTIA Petition at 10 (filed July 17, 1997).

areas often cover more than one State. Furthermore, traditional wireline traffic patterns are inapplicable to CMRS services.¹⁸ As a result, CMRS providers cannot easily separate revenues or assign cost recovery along traditional wireline-oriented jurisdictional lines.

CTIA has proposed alternative methods of artificially separating costs to satisfy the Commission's universal service contribution requirements. For example, the Commission's current rules governing contributions to the telecommunications relay service ("TRS"), slightly modified, would be a pragmatic mechanism for classifying CMRS revenues as interstate or intrastate.¹⁹ While these contribution separation mechanisms can be utilized to determine payments into the Commission's universal service fund in the aggregate, they are not practical to determine universal service cost recovery based on a subscriber's specific interstate calling.

The Commission's current universal service contribution rules must be adjusted for the unique wireless environment. The Commission's rules appear to require that carriers match interstate revenues to interstate customers. However, as stated above, CMRS providers cannot match consumers to their particular

¹⁸ The engineering and billing difficulties encountered by CMRS providers in tracking CMRS traffic has been discussed at length in CTIA's prior pleadings. See CTIA Petition for Reconsideration and Clarification at 14. See also Comments of Arch Communications Group, Inc. at 4 (filed August 18, 1997).

¹⁹ See CTIA Petition at 20.

interstate usage. CMRS providers should be permitted to recover their contribution obligations across all CMRS subscribers, applied on a system-wide basis.²⁰ Indeed, such a mechanism would permit CMRS providers to spread their contribution requirements over a broader base of customers, reducing the overall pass-through cost to each subscriber: a positive result.

As noted by other commenters, the Commission's rationale for limiting universal service cost recovery to interstate revenues was to prevent a "blanket increase in charges for basic residential dialtone service."²¹ CMRS service, of course, is not a basic residential service, and thus pass-through of universal service costs to all CMRS customers on a universal and equitable basis would not result in the anticipated increase. Nor would it implicate the distributional concerns that caused the Commission to avoid intrastate services as a source of subsidy. The additional federal/State comity issues raised by the Commission in this regard are also irrelevant since CMRS rates are a matter over which the States have no jurisdiction.

B. Carriers Should Be Permitted To Implement Cost Recovery Mechanisms Prior To Making Their First Contribution To The Commission's Universal Service Fund.

As noted above, the Commission not only anticipates that carriers will recover their contributions to universal service support mechanisms, but has directed in detail the manner in

²⁰ See Comments on and Oppositions to Petitions for Reconsideration filed by BellSouth Corporation and BellSouth Telecommunications, Inc. at 8 (filed August 18, 1997).

²¹ Universal Service Order at ¶¶ 827, 838.

which they may do so.²² The Commission, however, has not specified when a carrier can charge consumers for the recovery of universal service contributions. Carriers can realize the most efficient means of cost recovery by temporally matching, to the extent possible, their contribution requirements with their cost recovery methods. Minimizing the time between subscribers' obligations and the carrier's payment to the universal service funds, serves to limit the adverse affects from compounding the normal universal service transfers with intertemporal transfers.

CTIA seeks Commission clarification that carriers may implement a relatively more efficient cost recovery method by recovering a portion of their contribution obligations prior to making universal service payments. Pursuant to the current structure, carriers will be required to make quarterly payments into the universal service fund. Under this approach, carriers would collect a portion of their obligations in advance, and collect the remainder in arrears. For example, a carrier's first universal service payment obligation will be due in January 1998. By December 1997, it is reasonable to believe that carriers will be able to calculate their universal service obligations. At that time, they should be permitted to begin seeking recovery from their customers based on their estimated contribution obligations. In the event that a carrier has miscalculated its

²² In addition to explicitly permitting cost recovery from subscribers, the Commission went so far as to address concerns "that consumers receive complete information regarding the nature of the universal service contribution." Universal Service Order at ¶ 855.


universal service payments, it can correct that error over the next two months of the same quarter. Thus, carriers can begin to make partial recovery prior to their quarterly installment, and consumers will benefit from smaller monthly payments, as opposed to larger quarterly payments.

CONCLUSION

For these reasons, CTIA respectfully requests that the Commission deny the oppositions detailed herein and grant its Petition for Reconsideration.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION**

A handwritten signature in dark ink, appearing to read "Michael F. Altschul", is written over a horizontal line.

Michael F. Altschul
Vice President, General Counsel

Randall S. Coleman
Vice President for
Regulatory Policy and Law

1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036
(202) 785-0081

September 3, 1997

CERTIFICATE OF SERVICE

I, David M. Don, hereby certify that, on 3 September 1997, copies of the foregoing "Reply to Petitions for Reconsideration" of the Cellular Telecommunications Industry Association, were served by First Class Mail, postage prepaid, unless otherwise indicated, upon the following:

Chairman Reed Hundt*
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, DC 20554

Commissioner James H. Quello*
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Commissioner Rachelle B. Chong*
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, DC 20554

Commissioner Susan Ness*
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Daniel Phythyon*
Acting Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, DC 20554

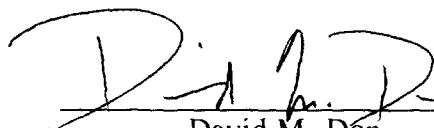
M. Robert Sutherland
Richard M. Sbaratta
BellSouth Corporation
BellSouth Telecommunications, Inc.
1155 Peachtree Street, N.E., Suite 1700
Atlanta, GA 30309-3610

Paul H. Kuzia
Arch Communications Group, Inc.
1800 West Park Drive
Suite 250
Westborough, MA 01581

Robert B. McKenna
John L. Traylor
U S WEST, INC.
1020 19th Street, N.W., Suite 700
Washington, DC 20036

Mary J. Sisak
Mary L. Brown
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

David A. Beckett
Assistant Attorney General
Office of the Attorney General
Colorado Public Utilities Commission
1525 Sherman Street - 5th Floor
Denver, CO 80203


David M. Don

* By Hand Delivery